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4 **UNITED STATES DISTRICT COURT**

5 **EASTERN DISTRICT OF CALIFORNIA**

6
7 ANTHONY ALBERT BAGGETT,

8 Plaintiff,

9 v.

10 POVERELLO HOUSE, *et al.*,

11 Defendants.

12 Case No. 1:24-cv-00931-BAM (PC)

13 ORDER DIRECTING CLERK OF COURT TO
14 RANDOMLY ASSIGN DISTRICT JUDGE

15 FINDINGS AND RECOMMENDATIONS
16 REGARDING DISMISSAL OF ACTION FOR
17 FAILURE TO PROSECUTE

18 **FOURTEEN (14) DAY DEADLINE**

19 **I. Background**

20 Plaintiff Anthony Albert Baggett (“Plaintiff”) is a civil detainee proceeding *pro se* and *in*
21 *forma pauperis* in this civil rights action under 42 U.S.C. § 1983. Individuals detained pursuant
22 to California Welfare and Institutions Code § 6600 *et seq.* are civil detainees and are not prisoners
23 within the meaning of the Prison Litigation Reform Act. *Page v. Torrey*, 201 F.3d 1136, 1140
24 (9th Cir. 2000). This matter was referred to a United States Magistrate Judge pursuant to 28
25 U.S.C. § 636(b)(1)(B) and Local Rule 302.

26 On August 5, 2024, Plaintiff initiated this action in the Sacramento Division of the United
27 States District Court for the Eastern District of California. (ECF Nos. 1, 2.) Prisoner new case
28 documents were issued by the Sacramento Division on August 6, 2024, the case was transferred
to the Fresno Division on August 12, 2024, and new case documents were issued by the Fresno
Division on August 12, 2024. (ECF Nos. 3, 4, 5.)

29 On August 12, 2024, the Sacramento Division new case documents were returned as
30 “Undeliverable, Not at this facility.” On August 14, 2024, the Court granted Plaintiff’s motion to
31 proceed *in forma pauperis* as a non-prisoner. (ECF No. 6.) The order transferring the case to the
32 Fresno Division and the Fresno Division new case documents were returned on August 26, 2024

1 as “Undeliverable, Not at Facility,” and the order granting Plaintiff’s *in forma pauperis* motion
2 was returned on August 27, 2024 as “Undeliverable, Vacant, Not at Facility.”

3 Plaintiff has not filed a notice of change of address or otherwise communicated with the
4 Court.

5 **II. Discussion**

6 Plaintiff is required to keep the Court apprised of his current address at all times. Local
7 Rule 183(b) provides:

8 **Address Changes.** A party appearing in propria persona shall keep the Court and
9 opposing parties advised as to his or her current address. If mail directed to a
10 plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and
11 if such plaintiff fails to notify the Court and opposing parties within sixty-three (63)
days thereafter of a current address, the Court may dismiss the action without
prejudice for failure to prosecute.

12 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to
13 prosecute.¹

14 According to the Court’s docket, Plaintiff’s address change was due no later than October
15 21, 2024. Plaintiff has failed to file a change of address and he has not otherwise been in contact
16 with the Court. “In determining whether to dismiss an action for lack of prosecution, the district
17 court is required to weigh several factors: (1) the public’s interest in expeditious resolution of
18 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;
19 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
20 drastic sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks
21 and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010); *In re*
22 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006).
23 These factors guide a court in deciding what to do, and are not conditions that must be met in
24 order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation omitted).

25 Given Plaintiff’s failure to respond to this Court’s order, the expeditious resolution of
26 litigation and the Court’s need to manage its docket weigh in favor of dismissal. *Id.* at 1227.

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¹ Courts may dismiss actions *sua sponte* under Rule 41(b) based on the plaintiff’s failure to prosecute. *Hells Canyon*
Pres. Council v. U. S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 More importantly, given the Court's apparent inability to communicate with Plaintiff, there are no
2 other reasonable alternatives available to address Plaintiff's failure to prosecute this action and his
3 failure to apprise the Court of his current address. *Id.* at 1228–29; *Carey*, 856 F.2d at 1441. The
4 Court will therefore recommend that this action be dismissed based on Plaintiff's failure to
5 prosecute this action.

6 **III. Conclusion and Recommendation**

7 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
8 district judge to this action.

9 Furthermore, the Court HEREBY RECOMMENDS that this action be dismissed, without
10 prejudice, based on Plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule 183(b).

11 These Findings and Recommendations will be submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
13 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may
14 file written objections with the court. The document should be captioned “Objections to
15 Magistrate Judge’s Findings and Recommendations.” **Objections, if any, shall not exceed**
16 **fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page**
17 **number if already in the record before the Court. Any pages filed in excess of the 15-page**
18 **limit may not be considered.** The parties are advised that failure to file objections within the
19 specified time may result in the waiver of the “right to challenge the magistrate’s factual
20 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter*
21 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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23 **IT IS SO ORDERED.**

24 Dated: October 31, 2024

25 /s/ *Barbara A. McAuliffe*
26 UNITED STATES MAGISTRATE JUDGE